

FILED
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2005 FEB 25 P 3:07
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MASSACHUSETTS

WILLIAM M. TYREE
P.O. BOX-100
SOUTH WALPOLE, MA. 02071
PLAINTIFF, Pro se

V.

UNITED STATES ARMY
CID AGENT PAUL MASON (Retired)
CID AGENT JOSEPH BURZENSKI (Retired)
DEFENDANTS
U.S. Department of Justice
John J. Moakley Courthouse
1 Courthouse Way, Suite 9200
Boston, Massachusetts 02210
(Main phone: 617-748-3100)
Counsel for Defendants

U.S. DISTRICT COURT
EASTERN DISTRICT OF MASS
C.A. 04-11430-RCL

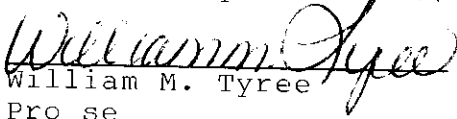
Plaintiff's Motion For
Entry Of Default Against
All Named Defendants.

(Rule 55 Of The FRCP)

Comes now the Plaintiff, William M. Tyree, Pro se, who moves this United States District Court, (USDC), to enter default against all named Defendants, U.S. Army, Paul Mason, and Joseph Burzenski. As grounds to allow this Motion and enter default prior to issuing the stay of proceedings pending decision on the Mandamus in the U.S. Court of Appeals for the First Circuit, the Plaintiff would offer the attached affidavit.

Respectfully submitted,

February 21, 2005


William M. Tyree
Pro se
P.O. Box-100
S. Walpole, MA. 02071

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MASSACHUSETTS

WILLIAM M. TYREE
P.O. BOX-100
SOUTH WALPOLE, MA. 02071
PLAINTIFF, Pro se

C.A. 04-11430-RCL

V.

**Affidavit Of William M.
Tyree In support Of The
Plaintiff's Motion For
Entry Of Default Prior
To The Stay Of Proceedings.**

UNITED STATES ARMY
CID AGENT PAUL MASON (Retired)
CID AGENT JOSEPH BURZENSKI (Retired)
DEFENDANTS
U.S. Department of Justice
John J. Moakley Courthouse
1 Courthouse Way, Suite 9200
Boston, Massachusetts 02210
(Main phone: 617-748-3100)
Counsel for Defendants

I, William M. Tyree, on oath state:

1. That, I am the named plaintiff in the above captioned case.
2. That, this action was docketed in the United States District Court, (USDC), C.A. 04-11430-RCL, in July 2004.
3. That, between July 2004, and December 13, 2004, the Office of the U.S. Attorney, (AUSA Michael P. Sady), did file and did receive two enlargements of time from the USDC.
4. That, on December 13, 2004, the USDC entered the attached Order directing **Reservice of all defendants with one sided pleadings (no two sided copies).**
5. That, on December 30, 2004, AUSA Sady notified the USDC by letter with a copy to the Plaintiff that he would not file

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Aff'd Of William M. Tyree
Motion For Entry Of Default

any further pleadings in the above entitled case until the Plaintiff complied with the Order of 12/13/04 from the USDC.

6. That, copies of U.S. Marshal Form (Form USM 285) attached to this affidavit reflect that **reservice of all Defendants have taken place and was effected by serving all Defendants through the U.S. Marshal to AUSA Sady by February 9, 2005.**

7. That, the Defendants are not:

(a). soldiers, sailors;

(b). infants nor incompetents.

8. That, the Defendants have had since July 2004 to formulate a response of some description and have delayed, stalled, and misused judicial resources through that action. There is currently in the U.S. Court of Appeals for the First Circuit, several motions pending seeking sanctions against the AUSA Sady for delaying judicial review of the matters related to the Mandamus due to his delays and stalling tactics. The proper course is for the USDC to enter default at this time and put the AUSA Sady on notice prior to entering the stay of proceedings in this case, (pending review of the Mandamus in the U.S. Court of Appeals), that once the stay of proceedings is vacated in the future. The USDC will expect an immediate response to the Amended Complaint in this case which had to be reserved per USDC order 12/13/04.

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Aff'd Of William M. Tyree
Motion For Entry Of Default

9. That, based on the contents of this affidavit the entry of default is not only warranted, but long over due. By allowing the AUSA (Sady) to not respond to the Amended Complaint, it raises the appearance of impropriety: it looks like the USDC is cattering to the whims of the Office of the U.S. Attorney and allowing that office unlimited time to do as it pleases in this case.

Signed under the pains and penalties of perjury on this date,

February 21, 2005


William M. Tyree

Pro se

P.O. Box-100

S. Walpole, MA. 02071

United States District Court

District of Massachusetts

Notice of Electronic Filing

The following transaction was received from Lindsay, Reginald entered on 12/13/2004 at 5:48 PM EST and filed on 12/13/2004

Case Name: Tyree v. United States Army et al

Case Number: 1:04-cv-11430

Filer:

Document Number:

Docket Text:

Judge Reginald C. Lindsay : electronic ORDER entered denying [2] Plaintiff's MOTION for the United States Marshal to Make Service on the Defendant CID Agent Joseph Burzenski, U.S. Army, (Retired), or in the Alternative, Order that Service of the Summons and Related Amended Complaint May be Made on the U.S. Attorney for the State of Massachusetts. To the extent that this is a motion seeking to have the Marshal's Service serve the complaint without fee, the motion is denied because the plaintiff is not proceeding in forma pauperis. The plaintiff may contact the Marshal's Service directly, pay the required fee, and have service made, or the plaintiff may seek leave to have a constable serve the papers. The court denies [6] Plaintiff's MOTION to File Two Sided Copies of Pleadings with the United States District Court in this case. Such filings may impede the scanning of the plaintiff's filings. The court denies without prejudice [7] Plaintiff's MOTION for the United States District Court Magistrate Judge to Adopt the Plaintiff's Proposed Finding of Fact and Conclusion of Law in the Plaintiff's Amended Complaint Supported by Exhibits 1-7, and Supplemental Pleadings. This motion is premature. The court denies [8] Plaintiff's MOTION to Effect Service of Amended Complaint with Exhibits 1-7 in Support and Supplemental Pleadings Served on United States District Court by Mailing Same to the Named Defendants VIA Certified U.S. Mail Return Receipt Requested. Service must be made in accordance with the Federal Rules of Civil Procedure and the court's Local Rules. (Lindsay, Reginald)

The following document(s) are associated with this transaction:

1:04-cv-11430 Notice will be electronically mailed to:


Michael P. Sady michael.sady@usdoj.gov, ellen.souris@usdoj.gov

1:04-cv-11430 Notice will not be electronically mailed to:

William M. Tyree
MCI Walpole
P.O. Box 100
South Walpole, MA 02071

U.S. Department of Justice
United States Marshals Service**PROCESS RECEIPT AND RETURN**

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

| | |
|--|---|
| PLAINTIFF | COURT CASE NUMBER |
| DEFENDANT | TYPE OF PROCESS |
| SERVE  AT | NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN |
| | ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) |

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:

Number of process to be served with this Form - 285

Number of parties to be served in this case

Check for service on U.S.A.

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

fold

Signature of Attorney or other Originator requesting service on behalf of:

☐ PLAINTIFF☐ DEFENDANT

TELEPHONE NUMBER

DATE

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINEI acknowledge receipt for the total number of process indicated.
(Sign only first USM 285 if more than one USM 285 is submitted)

Total Process

District of Origin

No

District to Serve

No

Signature of Authorized USMS Deputy or Clerk

Date

I hereby certify and return that I ☐ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc. named above (See remarks below)

Name and title of individual served (if not shown above)

☐ A person of suitable age and discretion then residing in the defendant's usual place of abode

Address (complete only if different than shown above)

Date of Service

Time

am

pm

Signature of U.S. Marshal or Deputy

| | | | | | | |
|-------------|---|----------------|---------------|------------------|--------------------------------|------------------|
| Service Fee | Total Mileage Charges (including endeavors) | Forwarding Fee | Total Charges | Advance Deposits | Amount owed to U.S. Marshal or | Amount of Refund |
|-------------|---|----------------|---------------|------------------|--------------------------------|------------------|

REMARKS:

NOTE

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN

See Instructions for Service of Process by the U.S. Marshal
on the reverse of this form.

| | | | | |
|--|---|--|---|----------|
| PLAINTIFF | William M. Tyree | | COURT CASE NUMBER | 04-11430 |
| DEFENDANT | Joseph Burzenski (U.S. Army CID Agent) | | TYPE OF PROCESS | CIVIL |
| SERVE ➡ AT | NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN | | | |
| | AVSA MICHAEL P. Sady | | | |
| | ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) | | | |
| | Fed Courthouse, Fenwick, Boston, MA | | | |
| SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW | | | | |
| Henry H. Amisden 15 Bridge St. Manchester, MA 01444 | | | Number of process to be served with this Form 285 | 2 |
| | | | Number of parties to be served in this case | 2 |
| | | | Check for service on U.S.A. | |

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE
Telephone Numbers, and Estimated Times Available For Service

| | | | |
|---|---|------------------|--------|
| Signature of Attorney or other Originator requesting service on behalf of | PLAINTIFF <input checked="" type="checkbox"/> PLAINIFF <input type="checkbox"/> DEFENDANT | TELEPHONE NUMBER | DATE |
| Henry H. Amisden (P.A.) | | 617-905-3531 | 2/7/05 |

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

| | | | | | |
|--|---------------|--------------------|-------------------|--|--------|
| I acknowledge receipt for the total number of process indicated. | Total Process | District of Origin | District to Serve | Signature of Authorized USMS Deputy or Clerk | Date |
| (Sign only first USM 285 if more than one USM 285 is submitted) | 1 | No. 38 | No. 38 | Henry H. Amisden | 2/9/05 |

I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "Remarks" the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

| | |
|--|---|
| Name and title of individual served (if not shown above) | <input type="checkbox"/> If person is unable to be located, then residing in the defendant's usual place of abode. Date of Service Time am 2/9/05 1:35 pm Signature of U.S. Marshal or Deputy Ben M. Webb |
| Address (complete only if different than shown above) | |
| Viviana L. Long (Receptionist) | |

| | | | | | | |
|-------------|---|----------------|---------------|------------------|--------------------------------|------------------|
| Service Fee | Total Mileage Charges (including endeavors) | Forwarding Fee | Total Charges | Advance Deposits | Amount owed to U.S. Marshal or | Amount of Refund |
| 45.00 | | | 45.00 | | | |

REMARKS:

NOTE

PRIOR EDITIONS
MAY BE USED

3. NOTICE OF SERVICE

FORM USM-285 (Rev. 12/15/80)

